

Francis Biro, M.D., 4/30/2013

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1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF PENNSYLVANIA

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 4 FREE SPEECH :
 COALITION, INC., et :
 5 al., :
 :
 6 Plaintiffs, :
 :
 7 vs. : CASE NO.
 : 2:09-CV-04607
 8 THE HONORABLE ERIC :
 HOLDER, JR., :
 9 :
 Defendant. :

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 11 Deposition of FRANCIS BIRO, M.D., a
 12 witness herein, taken by the plaintiffs as
 13 upon cross-examination, pursuant to the
 14 Federal Rules of Civil Procedure and pursuant
 15 to agreement of counsel as to the time and
 16 place and stipulations hereinafter set forth,
 17 at the offices of Children's Hospital, 3244
 18 Burnet Avenue, Seventh Floor, Cincinnati,
 19 Ohio, at 8:58 a.m., Tuesday, April 30, 2013,
 20 before Valerie Jones Conn, a Registered
 21 Professional Reporter, Certified Realtime
 22 Reporter, and Notary Public within and for
 23 the State of Ohio.

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1 minor. Would you agree with that?

2 MR. BLADUELL: Objection.

3 A. I would agree with that except
4 for the stipulation that there are people of
5 some race and ethnic backgrounds where that
6 gets more difficult to be able to make that
7 statement.

8 Q. All right. But you are
9 comfortable, once someone achieves the age of
10 25 years old or above, generally speaking, a
11 reasonable person looking at that person
12 would not confuse that person as a minor age
13 17 or below?

14 MR. BLADUELL: Objection.

15 A. With the qualification of
16 generally speaking and not trying to appear.

17 Q. Right. I mean, we've all
18 seen -- well, okay.

19 What about people who have
20 attained the age of 30 years or above? Would
21 you agree that a reasonable person is not
22 going to confuse someone who is 30 years or
23 above as a minor age 17 or below?

24 MR. BLADUELL: Objection.

1 A. I would agree that --

2 MR. BLADUELL: Objection.

3 A. -- a higher percentage would be.

4 Q. Okay. If you extend it from 14
5 to 25 years old would you agree that that age
6 range captures nearly everyone who would be
7 potentially confused?

8 MR. BLADUELL: Objection.

9 A. Clearly most. I'm not sure that
10 I, at this time, could say that nearly all.
11 I don't know what nearly all means. It's an
12 approximation but I'm not able to give you a
13 percentage. Yes, clearly most would be. I'm
14 not sure that I can say nearly all because
15 I'm not sure what nearly all means.

16 Q. Okay. Well, if we take it up to
17 the age of 30 no reasonable person is going
18 to confuse people 30 years of age or older
19 who are not wearing some kind of a costume as
20 being a minor. Would you agree with that?

21 MR. BLADUELL: Objection.

22 A. I think that would capture
23 nearly all who aren't trying to appear
24 younger.

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1 C E R T I F I C A T E

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STATE OF OHIO

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: SS

COUNTY OF HAMILTON

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5 I, Valerie Jones Conn, RPR, CRR, the
6 undersigned, a duly qualified notary public
7 within and for the State of Ohio, do hereby
8 certify that FRANCIS BIRO, M.D. was by me
9 first duly sworn to depose the truth and
10 nothing but the truth; foregoing is the
11 deposition given at said time and place by
12 said witness; deposition was taken pursuant
13 to stipulations hereinbefore set forth;
14 deposition was taken by me in stenotype and
15 transcribed by me by means of computer; that
16 the transcribed deposition was made available
17 to the witness for examination and signature
18 and that signature may be affixed out of the
19 presence of the Notary Public-Court Reporter.
20 I am neither a relative of any of the parties
21 or any of their counsel; I am not, nor is the
22 court reporting firm with which I am
23 affiliated, under a contract as defined in
24 Civil Rule 28(D) and have no financial
interest in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my
hand and official seal of office at
Cincinnati, Ohio this 8th day of May, 2013.

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My commission expires: Valerie Jones Conn, RPR, CRR
September 4, 2017 Notary Public - State of Ohio

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